



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4991

Introduced 01/23/06, by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 105/6z-26

805 ILCS 105/103.05

205 ILCS 665/Act rep.

from Ch. 32, par. 103.05

Creates the Uniform Debt-Management Services Act. Requires any person that provides, offers, or agrees to provide debt-management services, directly or through others, to register under the Act. Sets forth provisions concerning: applications for registration; issuance or denial of a certificate of registration; renewal of registration; registration in other states; bond requirements; good faith; customer service; prerequisites for providing debt-management services; agreements between providers and consumers; trust accounts; fees and other charges; prohibited acts and practices; notice of litigation; advertising; liability; the powers of the Director of the Division of Financial Institutions of the Department of Financial and Professional Regulation as Administrator under the Act; and other provisions. Exempts certain agreements and persons from the provisions of the Act. Repeals the Debt Management Service Act. Amends the State Finance Act and the General Not For Profit Corporation Act of 1986 to make corresponding changes. Effective January 1, 2007.

LRB094 18119 MKM 53426 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning debt-management services.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Uniform Debt-Management Services Act.

6 Section 2. Definitions. In this Act:

7 (1) "Administrator" means the Director of the Division of
8 Financial Institutions of the Department of Financial and
9 Professional Regulation.

10 (2) "Affiliate":

11 (A) with respect to an individual, means:

12 (i) the spouse of the individual;

13 (ii) a sibling of the individual or the spouse of a
14 sibling;

15 (iii) an individual or the spouse of an individual
16 who is a lineal ancestor or lineal descendant of the
17 individual or the individual's spouse;

18 (iv) an aunt, uncle, great aunt, great uncle, first
19 cousin, niece, nephew, grandniece, or grandnephew,
20 whether related by the whole or the half blood or
21 adoption, or the spouse of any of them; or

22 (v) any other individual occupying the residence
23 of the individual; and

24 (B) with respect to an entity, means:

25 (i) a person that directly or indirectly controls,
26 is controlled by, or is under common control with the
27 entity;

28 (ii) an officer of, or an individual performing
29 similar functions with respect to, the entity;

30 (iii) a director of, or an individual performing
31 similar functions with respect to, the entity;

32 (iv) subject to adjustment of the dollar amount

1 pursuant to Section 32(f), a person that receives or
2 received more than \$25,000 from the entity in either
3 the current year or the preceding year or a person that
4 owns more than 10% of, or an individual who is employed
5 by or is a director of, a person that receives or
6 received more than \$25,000 from the entity in either
7 the current year or the preceding year;

8 (v) an officer or director of, or an individual
9 performing similar functions with respect to, a person
10 described in subparagraph (i);

11 (vi) the spouse of, or an individual occupying the
12 residence of, an individual described in subparagraphs
13 (i) through (v); or

14 (vii) an individual who has the relationship
15 specified in subparagraph (A) (iv) to an individual or
16 the spouse of an individual described in subparagraphs
17 (i) through (v).

18 (3) "Agreement" means an agreement between a provider and
19 an individual for the performance of debt-management services.

20 (4) "Bank" means a financial institution, including a
21 commercial bank, savings bank, savings and loan association,
22 credit union, and trust company, engaged in the business of
23 banking, chartered under federal or state law, and regulated by
24 a federal or state banking regulatory authority.

25 (5) "Business address" means the physical location of a
26 business, including the name and number of a street.

27 (6) "Certified counselor" means an individual certified by
28 a training program or certifying organization, approved by the
29 Administrator, that authenticates the competence of
30 individuals providing education and assistance to other
31 individuals in connection with debt-management services.

32 (7) "Concessions" means assent to repayment of a debt on
33 terms more favorable to an individual than the terms of the
34 contract between the individual and a creditor.

35 (8) "Day" means calendar day.

36 (9) "Debt-management services" means services as an

1 intermediary between an individual and one or more creditors of
2 the individual for the purpose of obtaining concessions, but
3 does not include:

4 (A) legal services provided in an attorney-client
5 relationship by an attorney licensed or otherwise
6 authorized to practice law in this State;

7 (B) accounting services provided in an
8 accountant-client relationship by a certified public
9 accountant licensed to provide accounting services in this
10 State; or

11 (C) financial-planning services provided in a
12 financial planner-client relationship by a member of a
13 financial-planning profession whose members the
14 Administrator, by rule, determines are:

15 (i) licensed by this State;

16 (ii) subject to a disciplinary mechanism;

17 (iii) subject to a code of professional
18 responsibility; and

19 (iv) subject to a continuing-education
20 requirement.

21 (10) "Entity" means a person other than an individual.

22 (11) "Good faith" means honesty in fact and the observance
23 of reasonable standards of fair dealing.

24 (12) "Person" means an individual, corporation, business
25 trust, estate, trust, partnership, limited liability company,
26 association, joint venture, or any other legal or commercial
27 entity. The term does not include a public corporation,
28 government, or governmental subdivision, agency, or
29 instrumentality.

30 (13) "Plan" means a program or strategy in which a provider
31 furnishes debt-management services to an individual and that
32 includes a schedule of payments to be made by or on behalf of
33 the individual and used to pay debts owed by the individual.

34 (14) "Principal amount of the debt" means the amount of a
35 debt at the time of an agreement.

36 (15) "Provider" means a person that provides, offers to

1 provide, or agrees to provide debt-management services
2 directly or through others.

3 (16) "Record" means information that is inscribed on a
4 tangible medium or that is stored in an electronic or other
5 medium and is retrievable in perceivable form.

6 (17) "Settlement fee" means a charge imposed on or paid by
7 an individual in connection with a creditor's assent to accept
8 in full satisfaction of a debt an amount less than the
9 principal amount of the debt.

10 (18) "Sign" means, with present intent to authenticate or
11 adopt a record:

12 (A) to execute or adopt a tangible symbol; or

13 (B) to attach to or logically associate with the record
14 an electronic sound, symbol, or process.

15 (19) "State" means a state of the United States, the
16 District of Columbia, Puerto Rico, the United States Virgin
17 Islands, or any territory or insular possession subject to the
18 jurisdiction of the United States.

19 (20) "Trust account" means an account held by a provider
20 that is:

21 (A) established in an insured bank;

22 (B) separate from other accounts of the provider or its
23 designee;

24 (C) designated as a trust account or other account
25 designated to indicate that the money in the account is not
26 the money of the provider or its designee; and

27 (D) used to hold money of one or more individuals for
28 disbursement to creditors of the individuals.

29 Section 3. Exempt agreements and persons.

30 (a) This Act does not apply to an agreement with an
31 individual who the provider has no reason to know resides in
32 this State at the time of the agreement.

33 (b) This Act does not apply to a provider to the extent
34 that the provider:

35 (1) provides or agrees to provide debt-management,

1 educational, or counseling services to an individual who
2 the provider has no reason to know resides in this State at
3 the time the provider agrees to provide the services; or

4 (2) receives no compensation for debt-management
5 services from or on behalf of the individuals to whom it
6 provides the services or from their creditors.

7 (c) This Act does not apply to the following persons or
8 their employees when the person or the employee is engaged in
9 the regular course of the person's business or profession:

10 (1) a judicial officer, a person acting under an order
11 of a court or an administrative agency, or an assignee for
12 the benefit of creditors;

13 (2) a bank or a subsidiary of a bank;

14 (3) an affiliate, as defined in Section 2(2)(B)(i), of
15 a bank if the affiliate is regulated by a federal or state
16 banking regulatory authority; or

17 (4) a title insurer, escrow company, or other person
18 that provides bill-paying services if the provision of
19 debt-management services is incidental to the bill-paying
20 services.

21 Section 4. Registration required.

22 (a) Except as otherwise provided in subsection (b), a
23 provider may not provide debt-management services to an
24 individual who it reasonably should know resides in this State
25 at the time it agrees to provide the services, unless the
26 provider is registered under this Act.

27 (b) If a provider is registered under this Act, subsection
28 (a) does not apply to an employee or agent of the provider.

29 (c) The Administrator shall maintain and publicize a list
30 of the names of all registered providers.

31 Section 5. Application for registration; form, fee, and
32 accompanying documents.

33 (a) An application for registration as a provider must be
34 in a form prescribed by the Administrator.

1 (b) Subject to adjustment of dollar amounts pursuant to
2 Section 32(f), an application for registration as a provider
3 must be accompanied by:

4 (1) the fee established by the Administrator;

5 (2) the bond required by Section 13;

6 (3) identification of all trust accounts required by
7 Section 22 and an irrevocable consent authorizing the
8 Administrator to review and examine the trust accounts;

9 (4) evidence of insurance in the amount of \$250,000:

10 (A) against the risks of dishonesty, fraud, theft,
11 and other misconduct on the part of the applicant or a
12 director, employee, or agent of the applicant;

13 (B) issued by an insurance company authorized to do
14 business in this State and rated at least A by a
15 nationally recognized rating organization;

16 (C) with no deductible;

17 (D) payable to the applicant, the individuals who
18 have agreements with the applicant, and this State, as
19 their interests may appear; and

20 (E) not subject to cancellation by the applicant
21 without the approval of the Administrator;

22 (5) proof of compliance with the Business Corporation
23 Act of 1983 or the General Not For Profit Corporation Act
24 of 1986; and

25 (6) if the applicant is organized as a not-for-profit
26 entity or is exempt from taxation, evidence of
27 not-for-profit and tax-exempt status applicable to the
28 applicant under the Internal Revenue Code, 26 U.S.C.
29 Section 501, as amended.

30 Section 6. Application for registration; required
31 information. An application for registration must be signed
32 under oath and include:

33 (1) the applicant's name, principal business address and
34 telephone number, and all other business addresses in this
35 State, electronic-mail addresses, and Internet website

1 addresses;

2 (2) all names under which the applicant conducts business;

3 (3) the address of each location in this State at which the
4 applicant will provide debt-management services or a statement
5 that the applicant will have no such location;

6 (4) the name and home address of each officer and director
7 of the applicant and each person that owns at least 10% of the
8 applicant;

9 (5) identification of every jurisdiction in which, during
10 the 5 years immediately preceding the application:

11 (A) the applicant or any of its officers or directors
12 has been licensed or registered to provide debt-management
13 services; or

14 (B) individuals have resided when they received
15 debt-management services from the applicant;

16 (6) a statement describing, to the extent it is known or
17 should be known by the applicant, any material civil or
18 criminal judgment or litigation and any material
19 administrative or enforcement action by a governmental agency
20 in any jurisdiction against the applicant, any of its officers,
21 directors, owners, or agents, or any person who is authorized
22 to have access to the trust account required by Section 22;

23 (7) the applicant's financial statements, audited by an
24 accountant licensed to conduct audits, for each of the 2 years
25 immediately preceding the application or, if it has not been in
26 operation for the 2 years preceding the application, for the
27 period of its existence;

28 (8) evidence of accreditation by an independent
29 accrediting organization approved by the Administrator;

30 (9) evidence that, within 12 months after initial
31 employment, each of the applicant's counselors becomes
32 certified as a certified counselor;

33 (10) a description of the 3 most commonly used educational
34 programs that the applicant provides or intends to provide to
35 individuals who reside in this State and a copy of any
36 materials used or to be used in those programs;

1 (11) a description of the applicant's financial analysis
2 and initial budget plan, including any form or electronic
3 model, used to evaluate the financial condition of individuals;

4 (12) a copy of each form of agreement that the applicant
5 will use with individuals who reside in this State;

6 (13) the schedule of fees and charges that the applicant
7 will use with individuals who reside in this State;

8 (14) at the applicant's expense, the results of a
9 criminal-records check, including fingerprints, conducted
10 within the immediately preceding 12 months, covering every
11 officer of the applicant and every employee or agent of the
12 applicant who is authorized to have access to the trust account
13 required by Section 22;

14 (15) the names and addresses of all employers of each
15 director during the 10 years immediately preceding the
16 application;

17 (16) a description of any ownership interest of at least
18 10% by a director, owner, or employee of the applicant in:

19 (A) any affiliate of the applicant; or

20 (B) any entity that provides products or services to
21 the applicant or any individual relating to the applicant's
22 debt-management services;

23 (17) a statement of the amount of compensation of the
24 applicant's 5 most highly compensated employees for each of the
25 3 years immediately preceding the application or, if it has not
26 been in operation for the 3 years preceding the application,
27 for the period of its existence;

28 (18) the identity of each director who is an affiliate, as
29 defined in Section 2(2)(A) or (B) (i), (ii), (iv), (v), (vi),
30 or (vii), of the applicant; and

31 (19) any other information that the Administrator
32 reasonably requires to perform the Administrator's duties
33 under Section 9.

34 Section 7. Application for registration; obligation to
35 update information. An applicant or registered provider shall

1 notify the Administrator within 10 days after a change in the
2 information specified in Section 5(b)(4) or (6) or 6(1), (3),
3 (6), (12), or (13).

4 Section 8. Application for registration; public
5 information. Except for the information required by Section 6
6 (7), (14), and (17) and the addresses required by Section 6(4),
7 the Administrator shall make the information in an application
8 for registration as a provider available to the public.

9 Section 9. Certificate of registration; issuance or
10 denial.

11 (a) Except as otherwise provided in subsections (b) and
12 (c), the Administrator shall issue a certificate of
13 registration as a provider to a person that complies with
14 Sections 5 and 6.

15 (b) The Administrator may deny registration if:

16 (1) the application contains information that is
17 materially erroneous or incomplete;

18 (2) an officer, director, or owner of the applicant has
19 been convicted of a crime, or suffered a civil judgment,
20 involving dishonesty or the violation of state or federal
21 securities laws;

22 (3) the applicant or any of its officers, directors, or
23 owners has defaulted in the payment of money collected for
24 others; or

25 (4) the Administrator finds that the financial
26 responsibility, experience, character, or general fitness
27 of the applicant or its owners, directors, employees, or
28 agents does not warrant belief that the business will be
29 operated in compliance with this Act.

30 (c) The Administrator shall deny registration if:

31 (1) the application is not accompanied by the fee
32 established by the Administrator; or

33 (2) with respect to an applicant that is organized as a
34 not-for-profit entity or has obtained tax-exempt status

1 under the Internal Revenue Code, 26 U.S.C. Section 501, as
2 amended, the applicant's board of directors is not
3 independent of the applicant's employees and agents.

4 (d) Subject to adjustment of the dollar amount pursuant to
5 Section 32(f), a board of directors is not independent for
6 purposes of subsection (c) if more than one-fourth of its
7 members:

8 (1) are affiliates of the applicant, as defined in
9 Section 2(2)(A) or (B) (i), (ii), (iv), (v), (vi), or
10 (vii); or

11 (2) after the date 10 years before first becoming a
12 director of the applicant, were employed by or directors of
13 a person that received from the applicant more than \$25,000
14 in either the current year or the preceding year.

15 Section 10. Certificate of registration; timing.

16 (a) The Administrator shall approve or deny an initial
17 registration as a provider within 120 days after an application
18 is filed. In connection with a request pursuant to Section
19 6(19) for additional information, the Administrator may extend
20 the 120-day period for not more than 60 days. Within 7 days
21 after denying an application, the Administrator, in a record,
22 shall inform the applicant of the reasons for the denial.

23 (b) If the Administrator denies an application for
24 registration as a provider or does not act on an application
25 within the time prescribed in subsection (a), the applicant may
26 appeal and request a hearing pursuant to the Administrative
27 Review Law.

28 (c) Subject to Sections 11(d) and 34, a registration as a
29 provider is valid for one year.

30 Section 11. Renewal of registration.

31 (a) A provider must obtain a renewal of its registration
32 annually.

33 (b) An application for renewal of registration as a
34 provider must be in a form prescribed by the Administrator,

1 signed under oath, and:

2 (1) be filed no fewer than 30 and no more than 60 days
3 before the registration expires;

4 (2) be accompanied by the fee established by the
5 Administrator and the bond required by Section 13;

6 (3) contain the matter required for initial
7 registration as a provider by Section 6(8) and (9) and a
8 financial statement, audited by an accountant licensed to
9 conduct audits, for the applicant's fiscal year
10 immediately preceding the application;

11 (4) disclose any changes in the information contained
12 in the applicant's application for registration or its
13 immediately previous application for renewal, as
14 applicable;

15 (5) supply evidence of insurance in an amount equal to
16 the larger of \$250,000 or the highest daily balance in the
17 trust account required by Section 22 during the 6 month
18 period immediately preceding the application:

19 (A) against risks of dishonesty, fraud, theft, and
20 other misconduct on the part of the applicant or a
21 director, employee, or agent of the applicant;

22 (B) issued by an insurance company authorized to do
23 business in this State and rated at least A by a
24 nationally recognized rating organization;

25 (C) with no deductible;

26 (D) payable to the applicant, the individuals who
27 have agreements with the applicant, and this State, as
28 their interests may appear; and

29 (E) not subject to cancellation by the applicant
30 without the approval of the Administrator;

31 (6) disclose the total amount of money received by the
32 applicant pursuant to plans during the preceding 12 months
33 from or on behalf of individuals who reside in this State
34 and the total amount of money distributed to creditors of
35 those individuals during that period;

36 (7) disclose, to the best of the applicant's knowledge,

1 the gross amount of money accumulated during the preceding
2 12 months pursuant to plans by or on behalf of individuals
3 who reside in this State and with whom the applicant has
4 agreements; and

5 (8) provide any other information that the
6 Administrator reasonably requires to perform the
7 Administrator's duties under this Section.

8 (c) Except for the information required by Section 6(7),
9 (14), and (17) and the addresses required by Section 6(4), the
10 Administrator shall make the information in an application for
11 renewal of registration as a provider available to the public.

12 (d) If a registered provider files a timely and complete
13 application for renewal of registration, the registration
14 remains effective until the Administrator, in a record,
15 notifies the applicant of a denial and states the reasons for
16 the denial.

17 (e) If the Administrator denies an application for renewal
18 of registration as a provider, the applicant, within 30 days
19 after receiving notice of the denial, may appeal and request a
20 hearing pursuant to the Administrative Review Law. Subject to
21 Section 34, while the appeal is pending the applicant shall
22 continue to provide debt-management services to individuals
23 with whom it has agreements. If the denial is affirmed, subject
24 to the Administrator's order and Section 34, the applicant
25 shall continue to provide debt-management services to
26 individuals with whom it has agreements until, with the
27 approval of the Administrator, it transfers the agreements to
28 another registered provider or returns to the individuals all
29 unexpended money that is under the applicant's control.

30 Section 12. Registration in another state. If a provider
31 holds a license or certificate of registration in another state
32 authorizing it to provide debt-management services, the
33 provider may submit a copy of that license or certificate and
34 the application for it instead of an application in the form
35 prescribed by Section 5(a), 6, or 11(b). The Administrator

1 shall accept the application and the license or certificate
2 from the other state as an application for registration as a
3 provider or for renewal of registration as a provider, as
4 appropriate, in this State if:

5 (1) the application in the other state contains
6 information substantially similar to or more comprehensive
7 than that required in an application submitted in this
8 State;

9 (2) the applicant provides the information required by
10 Section 6(1), (3), (10), (12), and (13); and

11 (3) the applicant, under oath, certifies that the
12 information contained in the application is current or, to
13 the extent it is not current, supplements the application
14 to make the information current.

15 Section 13. Bond required.

16 (a) Except as otherwise provided in Section 14, a provider
17 that is required to be registered under this Act shall file a
18 surety bond with the Administrator, which must:

19 (1) be in effect during the period of registration and
20 for 2 years after the provider ceases providing
21 debt-management services to individuals in this State; and

22 (2) run to this State for the benefit of this State and
23 of individuals who reside in this State when they agree to
24 receive debt-management services from the provider, as
25 their interests may appear.

26 (b) Subject to adjustment of the dollar amount pursuant to
27 Section 32(f), a surety bond filed pursuant to subsection (a)
28 must:

29 (1) be in the amount of \$50,000 or other larger or
30 smaller amount that the Administrator determines is
31 warranted by the financial condition and business
32 experience of the provider, the history of the provider in
33 performing debt-management services, the risk to
34 individuals, and any other factor the Administrator
35 considers appropriate;

1 (2) be issued by a bonding, surety, or insurance
2 company authorized to do business in this State and rated
3 at least A by a nationally recognized rating organization;
4 and

5 (3) have payment conditioned upon noncompliance of the
6 provider or its agent with this Act.

7 (c) If the principal amount of a surety bond is reduced by
8 payment of a claim or a judgment, the provider shall
9 immediately notify the Administrator and, within 30 days after
10 notice by the Administrator, file a new or additional surety
11 bond in an amount set by the Administrator. The amount of the
12 new or additional bond must be at least the amount of the bond
13 immediately before payment of the claim or judgment. If for any
14 reason a surety terminates a bond, the provider shall
15 immediately file a new surety bond in the amount of \$50,000 or
16 other amount determined pursuant to subsection (b).

17 (d) The Administrator or an individual may obtain
18 satisfaction out of the surety bond procured pursuant to this
19 section if:

20 (1) the Administrator assesses expenses under Section
21 32(b)(1), issues a final order under Section 33(a)(2), or
22 recovers a final judgment under Section 33(a)(4) or (5) or
23 (d); or

24 (2) an individual recovers a final judgment pursuant to
25 Section 35(a), (b), or (c)(1), (2), or (4).

26 (e) If claims against a surety bond exceed or are
27 reasonably expected to exceed the amount of the bond, the
28 Administrator, on the initiative of the Administrator or on
29 petition of the surety, shall, unless the proceeds are adequate
30 to pay all costs, judgments, and claims, distribute the
31 proceeds in the following order:

32 (1) to satisfaction of a final order or judgment under
33 Section 33(a)(2), (4), or (5) or (d);

34 (2) to final judgments recovered by individuals
35 pursuant to Section 35(a), (b), or (c)(1), (2) or (4), pro
36 rata;

1 (3) to claims of individuals established to the
2 satisfaction of the Administrator, pro rata; and

3 (4) if a final order or judgment is issued under
4 Section 33(a), to the expenses charged pursuant to Section
5 32(b)(1).

6 Section 14. Bond required; substitute.

7 (a) Instead of the surety bond required by Section 13, a
8 provider may deliver to the Administrator, in the amount
9 required by Section 13(b), and, except as otherwise provided in
10 paragraph (2)(A), payable or available to this State and to
11 individuals who reside in this State when they agree to receive
12 debt-management services from the provider, as their interests
13 may appear, if the provider or its agent does not comply with
14 this Act:

15 (1) a certificate of insurance issued by an insurance
16 company authorized to do business in this State and rated
17 at least A by a nationally recognized rating organization,
18 with no deductible; or

19 (2) with the approval of the Administrator:

20 (A) an irrevocable letter of credit, issued or
21 confirmed by a bank approved by the Administrator,
22 payable upon presentation of a certificate by the
23 Administrator stating that the provider or its agent
24 has not complied with this Act; or

25 (B) bonds or other obligations of the United States
26 or guaranteed by the United States or bonds or other
27 obligations of this State or a political subdivision of
28 this State, to be deposited and maintained with a bank
29 approved by the Administrator for this purpose.

30 (b) If a provider furnishes a substitute pursuant to
31 subsection (a), the provisions of Section 13(a), (c), (d), and
32 (e) apply to the substitute.

33 Section 15. Requirement of good faith. A provider shall act
34 in good faith in all matters under this Act.

1 Section 16. Customer service. A provider that is required
2 to be registered under this Act shall maintain a toll-free
3 communication system, staffed at a level that reasonably
4 permits an individual to speak to a certified counselor or
5 customer-service representative, as appropriate, during
6 ordinary business hours.

7 Section 17. Prerequisites for providing debt-management
8 services.

9 (a) Before providing debt-management services, a
10 registered provider shall give the individual an itemized list
11 of goods and services and the charges for each. The list must
12 be clear and conspicuous, be in a record the individual may
13 keep whether or not the individual assents to an agreement, and
14 describe the goods and services the provider offers:

15 (1) free of additional charge if the individual enters
16 into an agreement;

17 (2) for a charge if the individual does not enter into
18 an agreement; and

19 (3) for a charge if the individual enters into an
20 agreement that sets forth each of the following using the
21 following terms:

22 (A) The dollar amount of any set-up fee.

23 (B) The dollar amount of any monthly service fee or
24 the method of determining the amount of that fee.

25 (C) The dollar amount of any settlement fee or the
26 method of determining the amount of that fee.

27 (D) The dollar amount of any fee for goods and
28 services in addition to those provided in connection
29 with the plan or the method of determining the amount
30 of that fee.

31 (b) A provider may not furnish debt-management services
32 unless the provider, through the services of a certified
33 counselor:

34 (1) provides the individual with reasonable education

1 about the management of personal finance;

2 (2) has prepared a financial analysis; and

3 (3) if the individual is to make regular, periodic
4 payments:

5 (A) has prepared a plan for the individual;

6 (B) has made a determination, based on the
7 provider's analysis of the information provided by the
8 individual and otherwise available to it, that the plan
9 is suitable for the individual and the individual will
10 be able to meet the payment obligations under the plan;
11 and

12 (C) believes that each creditor of the individual
13 listed as a participating creditor in the plan will
14 accept payment of the individual's debts as provided in
15 the plan.

16 (c) Before an individual assents to an agreement to engage
17 in a plan, a provider shall:

18 (1) provide the individual with a copy of the analysis
19 and plan required by subsection (b) in a record that
20 identifies the provider and that the individual may keep
21 whether or not the individual assents to the agreement;

22 (2) inform the individual of the availability, at the
23 individual's option, of assistance by a toll-free
24 communication system or in person to discuss the financial
25 analysis and plan required by subsection (b); and

26 (3) with respect to all creditors identified by the
27 individual or otherwise known by the provider to be
28 creditors of the individual, provide the individual with a
29 list of:

30 (A) creditors that the provider expects to
31 participate in the plan and grant concessions;

32 (B) creditors that the provider expects to
33 participate in the plan but not grant concessions;

34 (C) creditors that the provider expects not to
35 participate in the plan; and

36 (D) all other creditors.

1 (d) Before an individual assents to an agreement to engage
2 in a plan, the provider shall inform the individual, in a
3 record that contains nothing else, that is given separately,
4 and that the individual may keep whether or not the individual
5 assents to the agreement:

6 (1) of the name and business address of the provider;

7 (2) that plans are not suitable for all individuals and
8 the individual may ask the provider about other ways,
9 including bankruptcy, to deal with indebtedness;

10 (3) that establishment of a plan may adversely affect
11 the individual's credit rating or credit scores;

12 (4) that nonpayment of debt may lead creditors to
13 increase finance and other charges or undertake collection
14 activity, including litigation;

15 (5) unless it is not true, that the provider may
16 receive compensation from the creditors of the individual;
17 and

18 (6) that, unless the individual is insolvent, if a
19 creditor settles for less than the full amount of the debt,
20 the plan may result in the creation of taxable income to
21 the individual, even though the individual does not receive
22 any money.

23 (e) If a provider may receive payments from an individual's
24 creditors and the plan contemplates that the individual's
25 creditors will reduce finance charges or fees for late payment,
26 default, or delinquency, the provider may comply with
27 subsection (d) by providing the following disclosure,
28 surrounded by black lines:

29 IMPORTANT INFORMATION FOR YOU TO CONSIDER

30 (1) Debt-management plans are not right for all
31 individuals, and you may ask us to provide information
32 about other ways, including bankruptcy, to deal with your
33 debts.

34 (2) Using a debt-management plan may hurt your credit
35 rating or credit scores.

36 (3) We may receive compensation for our services from

1 your creditors.

2 _____

3 Name and business address of provider

4 (f) If a provider will not receive payments from an
5 individual's creditors and the plan contemplates that the
6 individual's creditors will reduce finance charges or fees for
7 late payment, default, or delinquency, a provider may comply
8 with subsection (d) by providing the following disclosure,
9 surrounded by black lines:

10 IMPORTANT INFORMATION FOR YOU TO CONSIDER

11 (1) Debt-management plans are not right for all
12 individuals, and you may ask us to provide information
13 about other ways, including bankruptcy, to deal with your
14 debts.

15 (2) Using a debt-management plan may hurt your credit
16 rating or credit scores.

17 _____

18 Name and business address of provider

19 (g) If a plan contemplates that creditors will settle debts
20 for less than the full principal amount of debt owed, a
21 provider may comply with subsection (d) by providing the
22 following disclosure, surrounded by black lines:

23 IMPORTANT INFORMATION FOR YOU TO CONSIDER

24 (1) Our program is not right for all individuals, and
25 you may ask us to provide information about bankruptcy and
26 other ways to deal with your debts.

27 (2) Nonpayment of your debts under our program may hurt
28 your credit rating or credit scores, lead your creditors to
29 increase finance and other charges, and lead your creditors
30 to undertake activity, including lawsuits, to collect the
31 debts.

32 (3) Reduction of debt under our program may result in
33 taxable income to you, even though you will not actually
34 receive any money.

35 _____

36 Name and business address of provider

1 Section 18. Communication by electronic or other means.

2 (a) In this Section:

3 (1) "Federal act" means the Electronic Signatures in
4 Global and National Commerce Act, 15 U.S.C. Section 7001 et
5 seq., as amended.

6 (2) "Consumer" means an individual who seeks or obtains
7 goods or services that are used primarily for personal,
8 family, or household purposes.

9 (b) A provider may satisfy the requirements of Section 17,
10 19, or 27 by means of the Internet or other electronic means if
11 the provider obtains a consumer's consent in the manner
12 provided by Section 101(c)(1) of the federal act.

13 (c) The disclosures and materials required by Sections 17,
14 19, and 27 shall be presented in a form that is capable of
15 being accurately reproduced for later reference.

16 (d) With respect to disclosure by means of an Internet
17 website, the disclosure of the information required by Section
18 17(d) must appear on one or more screens that:

19 (1) contain no other information; and

20 (2) the individual must see before proceeding to assent
21 to formation of a plan.

22 (e) At the time of providing the materials and agreement
23 required by Sections 17(c) and (d), 19, and 27, a provider
24 shall inform the individual that upon electronic, telephonic,
25 or written request, it will send the individual a written copy
26 of the materials, and shall comply with a request as provided
27 in subsection (f).

28 (f) If a provider is requested, before the expiration of 90
29 days after a plan is completed or terminated, to send a written
30 copy of the materials required by Section 17(c) and (d), 19, or
31 27, the provider shall send them at no charge within three
32 business days after the request, but the provider need not
33 comply with a request more than once per calendar month or if
34 it reasonably believes the request is made for purposes of
35 harassment. If a request is made more than 90 days after a plan

1 is completed or terminated, the provider shall send within a
2 reasonable time a written copy of the materials requested.

3 (g) A provider that maintains an Internet website shall
4 disclose on the home page of its website or on a page that is
5 clearly and conspicuously connected to the home page by a link
6 that clearly reveals its contents:

7 (1) its name and all names under which it does
8 business;

9 (2) its principal business address, telephone number,
10 and electronic-mail address, if any; and

11 (3) the names of its principal officers.

12 (h) Subject to subsection (i), if a consumer who has
13 consented to electronic communication in the manner provided by
14 Section 101 of the federal act withdraws consent as provided in
15 the federal act, a provider may terminate its agreement with
16 the consumer.

17 (i) If a provider wishes to terminate an agreement with a
18 consumer pursuant to subsection (h), it shall notify the
19 consumer that it will terminate the agreement unless the
20 consumer, within 30 days after receiving the notification,
21 consents to electronic communication in the manner provided in
22 Section 101(c) of the federal act. If the consumer consents,
23 the provider may terminate the agreement only as permitted by
24 Section 19(a)(6)(G).

25 Section 19. Form and contents of agreement.

26 (a) An agreement must:

27 (1) be in a record;

28 (2) be dated and signed by the provider and the
29 individual;

30 (3) include the name of the individual and the address
31 where the individual resides;

32 (4) include the name, business address, and telephone
33 number of the provider;

34 (5) be delivered to the individual immediately upon
35 formation of the agreement; and

1 (6) disclose:

2 (A) the services to be provided;

3 (B) the amount, or method of determining the
4 amount, of all fees, individually itemized, to be paid
5 by the individual;

6 (C) the schedule of payments to be made by or on
7 behalf of the individual, including the amount of each
8 payment, the date on which each payment is due, and an
9 estimate of the date of the final payment;

10 (D) if a plan provides for regular periodic
11 payments to creditors:

12 (i) each creditor of the individual to which
13 payment will be made, the amount owed to each
14 creditor, and any concessions the provider
15 reasonably believes each creditor will offer; and

16 (ii) the schedule of expected payments to each
17 creditor, including the amount of each payment and
18 the date on which it will be made;

19 (E) each creditor that the provider believes will
20 not participate in the plan and to which the provider
21 will not direct payment;

22 (F) how the provider will comply with its
23 obligations under Section 27(a);

24 (G) that the provider may terminate the agreement
25 for good cause, upon return of unexpended money of the
26 individual;

27 (H) that the individual may cancel the agreement as
28 provided in Section 20;

29 (I) that the individual may contact the
30 Administrator with any questions or complaints
31 regarding the provider; and

32 (J) the address, telephone number, and Internet
33 address or website of the Administrator.

34 (b) For purposes of subsection (a)(5), delivery of an
35 electronic record occurs when it is made available in a format
36 in which the individual may retrieve, save, and print it and

1 the individual is notified that it is available.

2 (c) If the Administrator supplies the provider with any
3 information required under subsection (a)(6)(J), the provider
4 may comply with that requirement only by disclosing the
5 information supplied by the Administrator.

6 (d) An agreement must provide that:

7 (1) the individual has a right to terminate the
8 agreement at any time, without penalty or obligation, by
9 giving the provider written or electronic notice, in which
10 event:

11 (A) the provider will refund all unexpended money
12 that the provider or its agent has received from or on
13 behalf of the individual for the reduction or
14 satisfaction of the individual's debt;

15 (B) with respect to an agreement that contemplates
16 that creditors will settle debts for less than the
17 principal amount of debt, the provider will refund 65%
18 of any portion of the set-up fee that has not been
19 credited against the settlement fee; and

20 (C) all powers of attorney granted by the
21 individual to the provider are revoked and
22 ineffective;

23 (2) the individual authorizes any bank in which the
24 provider or its agent has established a trust account to
25 disclose to the Administrator any financial records
26 relating to the trust account; and

27 (3) the provider will notify the individual within 5
28 days after learning of a creditor's decision to reject or
29 withdraw from a plan and that this notice will include:

30 (A) the identity of the creditor; and

31 (B) the right of the individual to modify or
32 terminate the agreement.

33 (e) An agreement may confer on a provider a power of
34 attorney to settle the individual's debt for no more than 50%
35 of the principal amount of the debt. An agreement may not
36 confer a power of attorney to settle a debt for more than 50%

1 of that amount, but may confer a power of attorney to negotiate
2 with creditors of the individual on behalf of the individual.
3 An agreement must provide that the provider will obtain the
4 assent of the individual after a creditor has assented to a
5 settlement for more than 50% of the principal amount of the
6 debt.

7 (f) An agreement may not:

8 (1) provide for application of the law of any
9 jurisdiction other than the United States and this State;

10 (2) except as permitted by Section 2 of the Federal
11 Arbitration Act, 9 U.S.C. Section 2, as amended, contain a
12 provision that modifies or limits otherwise available
13 forums or procedural rights, including the right to trial
14 by jury, that are generally available to the individual
15 under law other than this Act;

16 (3) contain a provision that restricts the
17 individual's remedies under this Act or law other than this
18 Act; or

19 (4) contain a provision that:

20 (A) limits or releases the liability of any person
21 for not performing the agreement or for violating this
22 Act; or

23 (B) indemnifies any person for liability arising
24 under the agreement or this Act.

25 (g) All rights and obligations specified in subsection (d)
26 and Section 20 exist even if not provided in the agreement. A
27 provision in an agreement which violates subsection (d), (e),
28 or (f) is void.

29 Section 20. Cancellation of agreement; waiver.

30 (a) An individual may cancel an agreement before midnight
31 of the third business day after the individual assents to it,
32 unless the agreement does not comply with subsection (b) or
33 Section 19 or 28, in which event the individual may cancel the
34 agreement within 30 days after the individual assents to it. To
35 exercise the right to cancel, the individual must give notice

1 in a record to the provider. Notice by mail is given when
2 mailed.

3 (b) An agreement must be accompanied by a form that
4 contains in bold-face type, surrounded by bold black lines:

5 Notice of Right to Cancel

6 You may cancel this agreement, without any penalty or
7 obligation, at any time before midnight of the third business
8 day that begins the day after you agree to it by electronic
9 communication or by signing it.

10 To cancel this agreement during this period, send an e-mail
11 to _____ (e-mail address of provider)
12 or mail or deliver a signed, dated copy of this notice, or any
13 other written notice to _____
14 (name of provider) at _____ (address
15 of provider) before midnight on _____ (date).

16 If you cancel this agreement within the 3-day period, we
17 will refund all money you already have paid us.

18 You also may terminate this agreement at any later time,
19 but we are not required to refund fees you have paid us.

20 I cancel this agreement,

21 _____

22 Print your name

23 _____

24 Signature

25 _____

26 Date

27 (c) If a personal financial emergency necessitates the
28 disbursement of an individual's money to one or more of the
29 individual's creditors before the expiration of 3 days after an
30 agreement is signed, an individual may waive the right to
31 cancel. To waive the right, the individual must send or deliver
32 a signed, dated statement in the individual's own words
33 describing the circumstances that necessitate a waiver. The
34 waiver must explicitly waive the right to cancel. A waiver by
35 means of a standard-form record is void.

1 Section 21. Required language. Unless the Administrator,
2 by rule, provides otherwise, the disclosures and documents
3 required by this Act must be in English. If a provider
4 communicates with an individual primarily in a language other
5 than English, the provider must furnish a translation into the
6 other language of the disclosures and documents required by
7 this Act.

8 Section 22. Trust account.

9 (a) All money paid to a provider by or on behalf of an
10 individual pursuant to a plan for distribution to creditors is
11 held in trust. Within 2 business days after receipt, the
12 provider shall deposit the money in a trust account established
13 for the benefit of individuals to whom the provider is
14 furnishing debt-management services.

15 (b) Money held in trust by a provider is not property of
16 the provider or its designee. The money is not available to
17 creditors of the provider or designee, except an individual
18 from whom or on whose behalf the provider received money, to
19 the extent that the money has not been disbursed to creditors
20 of the individual.

21 (c) A provider shall:

22 (1) maintain separate records of account for each
23 individual to whom the provider is furnishing
24 debt-management services;

25 (2) disburse money paid by or on behalf of the
26 individual to creditors of the individual as disclosed in
27 the agreement, except that:

28 (A) the provider may delay payment to the extent
29 that a payment by the individual is not final; and

30 (B) if a plan provides for regular periodic
31 payments to creditors, the disbursement must comply
32 with the due dates established by each creditor; and

33 (C) promptly correct any payments that are not made
34 or that are misdirected as a result of an error by the
35 provider or other person in control of the trust

1 account and reimburse the individual for any costs or
2 fees imposed by a creditor as a result of the failure
3 to pay or misdirection.

4 (d) A provider may not commingle money in a trust account
5 established for the benefit of individuals to whom the provider
6 is furnishing debt-management services with money of other
7 persons.

8 (e) A trust account must at all times have a cash balance
9 equal to the sum of the balances of each individual's account.

10 (f) If a provider has established a trust account pursuant
11 to subsection (a), the provider shall reconcile the trust
12 account at least once a month. The reconciliation must compare
13 the cash balance in the trust account with the sum of the
14 balances in each individual's account. If the provider or its
15 designee has more than one trust account, each trust account
16 must be individually reconciled.

17 (g) If a provider discovers, or has a reasonable suspicion
18 of, embezzlement or other unlawful appropriation of money held
19 in trust, the provider immediately shall notify the
20 Administrator by a method approved by the Administrator. Unless
21 the Administrator by rule provides otherwise, within 5 days
22 thereafter, the provider shall give notice to the Administrator
23 describing the remedial action taken or to be taken.

24 (h) If an individual terminates an agreement or it becomes
25 reasonably apparent to a provider that a plan has failed, the
26 provider shall promptly refund to the individual all money paid
27 by or on behalf of the individual which has not been paid to
28 creditors, less fees that are payable to the provider under
29 Section 23.

30 (i) Before relocating a trust account from one bank to
31 another, a provider shall inform the Administrator of the name,
32 business address, and telephone number of the new bank. As soon
33 as practicable, the provider shall inform the Administrator of
34 the account number of the trust account at the new bank.

35 Section 23. Fees and other charges.

1 (a) A provider may not impose directly or indirectly a fee
2 or other charge on an individual or receive money from or on
3 behalf of an individual for debt-management services except as
4 permitted by this section.

5 (b) A provider may not impose charges or receive payment
6 for debt-management services until the provider and the
7 individual have signed an agreement that complies with Sections
8 19 and 28.

9 (c) If an individual assents to an agreement, a provider
10 may not impose a fee or other charge for educational or
11 counseling services, or the like, except as otherwise provided
12 in this subsection and Section 28(d). The Administrator may
13 authorize a provider to charge a fee based on the nature and
14 extent of the educational or counseling services furnished by
15 the provider.

16 (d) Subject to adjustment of dollar amounts pursuant to
17 Section 32(f), the following rules apply:

18 (1) If an individual assents to a plan that
19 contemplates that creditors will reduce finance charges or
20 fees for late payment, default, or delinquency, the
21 provider may charge:

22 (A) a fee not exceeding \$50 for consultation,
23 obtaining a credit report, setting up an account, and
24 the like; and

25 (B) a monthly service fee, not to exceed \$10 times
26 the number of creditors remaining in a plan at the time
27 the fee is assessed, but not more than \$50 in any
28 month.

29 (2) If an individual assents to a plan that
30 contemplates that creditors will settle debts for less than
31 the principal amount of the debt, a provider may charge:

32 (A) subject to Section 19(d), a fee for
33 consultation, obtaining a credit report, setting up an
34 account, and the like, in an amount not exceeding the
35 lesser of \$400 and four percent of the debt in the plan
36 at the inception of the plan; and

1 (B) a monthly service fee, not to exceed \$10 times
2 the number of creditors remaining in a plan at the time
3 the fee is assessed, but not more than \$50 in any
4 month.

5 (3) A provider may not impose or receive fees under
6 both paragraphs (1) and (2).

7 (4) Except as otherwise provided in Section 28(d), if
8 an individual does not assent to an agreement, a provider
9 may receive for educational and counseling services it
10 provides to the individual a fee not exceeding \$100 or,
11 with the approval of the Administrator, a larger fee. The
12 Administrator may approve a fee larger than \$100 if the
13 nature and extent of the educational and counseling
14 services warrant the larger fee.

15 (e) If, before the expiration of 90 days after the
16 completion or termination of educational or counseling
17 services, an individual assents to an agreement, the provider
18 shall refund to the individual any fee paid pursuant to
19 subsection (d)(4).

20 (f) Except as otherwise provided in subsections (c) and
21 (d), if a plan contemplates that creditors will settle an
22 individual's debts for less than the principal amount of the
23 debt, compensation for services in connection with settling a
24 debt may not exceed, with respect to each debt:

25 (1) 30% of the excess of the principal amount of the
26 debt over the amount paid the creditor pursuant to the plan
27 less

28 (2) to the extent it has not been credited against an
29 earlier settlement fee:

30 (A) the fee charged pursuant to subsection
31 (d)(2)(A); and

32 (B) the aggregate of fees charged pursuant to
33 subsection (d)(2)(B).

34 (g) Subject to adjustment of the dollar amount pursuant to
35 Section 32(f), if a payment to a provider by an individual
36 under this Act is dishonored, a provider may impose a

1 reasonable charge on the individual, not to exceed the lesser
2 of \$25 and the amount permitted by law other than this Act.

3 Section 24. Voluntary contributions. A provider may not
4 solicit a voluntary contribution from an individual or an
5 affiliate of the individual for any service provided to the
6 individual. A provider may accept voluntary contributions from
7 an individual but, until 30 days after completion or
8 termination of a plan, the aggregate amount of money received
9 from or on behalf of the individual may not exceed the total
10 amount the provider may charge the individual under Section 23.

11 Section 25. Voidable agreements.

12 (a) If a provider imposes a fee or other charge or receives
13 money or other payments not authorized by Section 23 or 24, the
14 individual may void the agreement and recover as provided in
15 Section 35.

16 (b) If a provider is not registered as required by this Act
17 when an individual assents to an agreement, the agreement is
18 voidable by the individual.

19 (c) If an individual voids an agreement under subsection
20 (b), the provider does not have a claim against the individual
21 for breach of contract or for restitution.

22 Section 26. Termination of agreements.

23 (a) If an individual who has entered into an agreement
24 fails for 60 days to make payments required by the agreement, a
25 provider may terminate the agreement.

26 (b) If a provider or an individual terminates an agreement,
27 the provider shall immediately return to the individual:

28 (1) any money of the individual held in trust for the
29 benefit of the individual; and

30 (2) 65% of any portion of the set-up fee received
31 pursuant to Section 23(d)(2) which has not been credited
32 against settlement fees.

1 Section 27. Periodic reports and retention of records.

2 (a) A provider shall provide the accounting required by
3 subsection (b):

4 (1) upon cancellation or termination of an agreement;
5 and

6 (2) before cancellation or termination of any
7 agreement:

8 (A) at least once each month; and

9 (B) within 5 business days after a request by an
10 individual, but the provider need not comply with more
11 than one request in any calendar month.

12 (b) A provider, in a record, shall provide each individual
13 for whom it has established a plan an accounting of the
14 following information:

15 (1) the amount of money received from the individual
16 since the last report;

17 (2) the amounts and dates of disbursement made on the
18 individual's behalf, or by the individual upon the
19 direction of the provider, since the last report to each
20 creditor listed in the plan;

21 (3) the amounts deducted from the amount received from
22 the individual;

23 (4) the amount held in reserve; and

24 (5) if, since the last report, a creditor has agreed to
25 accept as payment in full an amount less than the principal
26 amount of the debt owed by the individual:

27 (A) the total amount and terms of the settlement;

28 (B) the amount of the debt when the individual
29 assented to the plan;

30 (C) the amount of the debt when the creditor agreed
31 to the settlement; and

32 (D) the calculation of a settlement fee.

33 (c) A provider shall maintain records for each individual
34 for whom it provides debt-management services for 5 years after
35 the final payment made by the individual and produce a copy of
36 them to the individual within a reasonable time after a request

1 for them. The provider may use electronic or other means of
2 storage of the records.

3 Section 28. Prohibited acts and practices.

4 (a) A provider may not, directly or indirectly:

5 (1) misappropriate or misapply money held in trust;

6 (2) settle a debt on behalf of an individual for more
7 than 50% of the principal amount of the debt owed a
8 creditor, unless the individual assents to the settlement
9 after the creditor has assented;

10 (3) take a power of attorney that authorizes it to
11 settle a debt, unless the power of attorney expressly
12 limits the provider's authority to settle debts for not
13 more than 50% of the principal amount of the debt owed a
14 creditor;

15 (4) exercise or attempt to exercise a power of attorney
16 after an individual has terminated an agreement;

17 (5) initiate a transfer from an individual's account at
18 a bank or with another person unless the transfer is:

19 (A) a return of money to the individual; or

20 (B) before termination of an agreement, properly
21 authorized by the agreement and this Act, and for:

22 (i) payment to one or more creditors pursuant
23 to a plan; or

24 (ii) payment of a fee.

25 (6) offer a gift or bonus, premium, reward, or other
26 compensation to an individual for executing an agreement;

27 (7) offer, pay, or give a gift or bonus, premium,
28 reward, or other compensation to a person for referring a
29 prospective customer, if the person making the referral has
30 a financial interest in the outcome of debt-management
31 services provided to the customer, unless neither the
32 provider nor the person making the referral communicates to
33 the prospective customer the identity of the source of the
34 referral;

35 (8) receive a bonus, commission, or other benefit for

1 referring an individual to a person;

2 (9) structure a plan in a manner that would result in a
3 negative amortization of any of an individual's debts,
4 unless a creditor that is owed a negatively amortizing debt
5 agrees to refund or waive the finance charge upon payment
6 of the principal amount of the debt;

7 (10) compensate its employees on the basis of a formula
8 that incorporates the number of individuals the employee
9 induces to enter into agreements;

10 (11) settle a debt or lead an individual to believe
11 that a payment to a creditor is in settlement of a debt to
12 the creditor unless, at the time of settlement, the
13 individual receives a certification by the creditor that
14 the payment is in full settlement of the debt;

15 (12) make a representation that:

16 (A) the provider will furnish money to pay bills or
17 prevent attachments;

18 (B) payment of a certain amount will permit
19 satisfaction of a certain amount or range of
20 indebtedness; or

21 (C) participation in a plan will or may prevent
22 litigation, garnishment, attachment, repossession,
23 foreclosure, eviction, or loss of employment;

24 (13) misrepresent that it is authorized or competent to
25 furnish legal advice or perform legal services;

26 (14) represent that it is a not-for-profit entity
27 unless it is organized and properly operating as a
28 not-for-profit under the law of the state in which it was
29 formed or that it is a tax-exempt entity unless it has
30 received certification of tax-exempt status from the
31 Internal Revenue Service;

32 (15) take a confession of judgment or power of attorney
33 to confess judgment against an individual; or

34 (16) employ an unfair, unconscionable, or deceptive
35 act or practice, including the knowing omission of any
36 material information.

1 (b) If a provider furnishes debt-management services to an
2 individual, the provider may not, directly or indirectly:

3 (1) purchase a debt or obligation of the individual;

4 (2) receive from or on behalf of the individual:

5 (A) a promissory note or other negotiable
6 instrument other than a check or a demand draft; or

7 (B) a post-dated check or demand draft;

8 (3) lend money or provide credit to the individual,
9 except as a deferral of a settlement fee at no additional
10 expense to the individual;

11 (4) obtain a mortgage or other security interest from
12 any person in connection with the services provided to the
13 individual;

14 (5) except as permitted by federal law, disclose the
15 identity or identifying information of the individual or
16 the identity of the individual's creditors, except to:

17 (A) the Administrator, upon proper demand;

18 (B) a creditor of the individual, to the extent
19 necessary to secure the cooperation of the creditor in
20 a plan; or

21 (C) the extent necessary to administer the plan;

22 (6) except as otherwise provided in Section 23(f),
23 provide the individual less than the full benefit of a
24 compromise of a debt arranged by the provider;

25 (7) charge the individual for or provide credit or
26 other insurance, coupons for goods or services, membership
27 in a club, access to computers or the Internet, or any
28 other matter not directly related to debt-management
29 services or educational services concerning personal
30 finance; or

31 (8) furnish legal advice or perform legal services,
32 unless the person furnishing that advice to or performing
33 those services for the individual is licensed to practice
34 law.

35 (c) This Act does not authorize any person to engage in the
36 practice of law.

1 (d) A provider may not receive a gift or bonus, premium,
2 reward, or other compensation, directly or indirectly, for
3 advising, arranging, or assisting an individual in connection
4 with obtaining, an extension of credit or other service from a
5 lender or service provider, except for educational or
6 counseling services required in connection with a
7 government-sponsored program.

8 (e) Unless a person supplies goods, services, or facilities
9 generally and supplies them to the provider at a cost no
10 greater than the cost the person generally charges to others, a
11 provider may not purchase goods, services, or facilities from
12 the person if an employee or a person that the provider should
13 reasonably know is an affiliate of the provider:

- 14 (1) owns more than 10% of the person; or
15 (2) is an employee or affiliate of the person.

16 Section 29. Notice of litigation. No later than 30 days
17 after a provider has been served with notice of a civil action
18 for violation of this Act by or on behalf of an individual who
19 resides in this State at either the time of an agreement or the
20 time the notice is served, the provider shall notify the
21 Administrator in a record that it has been sued.

22 Section 30. Advertising. A provider that advertises
23 debt-management services shall disclose, in an easily
24 comprehensible manner, the information specified in Section
25 17(d) (3) and (4).

26 Section 31. Liability for the conduct of other persons. If
27 a provider delegates any of its duties or obligations under an
28 agreement or this Act to another person, including an
29 independent contractor, the provider is liable for conduct of
30 the person which, if done by the provider, would violate the
31 agreement or this Act.

32 Section 32. Powers of Administrator.

1 (a) The Administrator may act on his or her own initiative
2 or in response to complaints and may receive complaints, take
3 action to obtain voluntary compliance with this Act, refer
4 cases to the Attorney General, and seek or provide remedies as
5 provided in this Act.

6 (b) The Administrator may investigate and examine, in this
7 State or elsewhere, by subpoena or otherwise, the activities,
8 books, accounts, and records of a person that provides or
9 offers to provide debt-management services, or a person to
10 which a provider has delegated its obligations under an
11 agreement or this Act, to determine compliance with this Act.
12 Information that identifies individuals who have agreements
13 with the provider shall not be disclosed to the public. In
14 connection with the investigation, the Administrator may:

15 (1) charge the person the reasonable expenses
16 necessarily incurred to conduct the examination;

17 (2) require or permit a person to file a statement
18 under oath as to all the facts and circumstances of a
19 matter to be investigated; and

20 (3) seek a court order authorizing seizure from a bank
21 at which the person maintains a trust account required by
22 Section 22, any or all money, books, records, accounts, and
23 other property of the provider that is in the control of
24 the bank and relates to individuals who reside in this
25 State.

26 (c) The Administrator may adopt rules to implement the
27 provisions of this Act in accordance with the Illinois
28 Administrative Procedure Act.

29 (d) The Administrator may enter into cooperative
30 arrangements with any other federal or state agency having
31 authority over providers and may exchange with any of those
32 agencies information about a provider, including information
33 obtained during an examination of the provider.

34 (e) The Administrator, by rule, shall establish reasonable
35 fees to be paid by providers for the expense of administering
36 this Act.

1 (f) The Administrator, by rule, shall adopt dollar amounts
2 instead of those specified in Sections 2, 5, 9, 13, 23, 33, and
3 35 to reflect inflation, as measured by the United States
4 Bureau of Labor Statistics Consumer Price Index for All Urban
5 Consumers or, if that index is not available, another index
6 adopted by rule by the Administrator. The Administrator shall
7 adopt a base year and adjust the dollar amounts, effective on
8 July 1 of each year, if the change in the index from the base
9 year, as of December 31 of the preceding year, is at least 10%.
10 The dollar amount must be rounded to the nearest \$100, except
11 that the amounts in Section 23 must be rounded to the nearest
12 dollar.

13 (g) The Administrator shall notify registered providers of
14 any change in dollar amounts made pursuant to subsection (f)
15 and make that information available to the public.

16 Section 33. Administrative remedies.

17 (a) The Administrator may enforce this Act and rules
18 adopted under this Act by taking one or more of the following
19 actions:

20 (1) ordering a provider or a director, employee, or
21 other agent of a provider to cease and desist from any
22 violations;

23 (2) ordering a provider or a person that has caused a
24 violation to correct the violation, including making
25 restitution of money or property to a person aggrieved by a
26 violation;

27 (3) subject to adjustment of the dollar amount pursuant
28 to Section 32(f), imposing on a provider or a person that
29 has caused a violation a civil penalty not exceeding
30 \$10,000 for each violation;

31 (4) prosecuting a civil action to:

32 (A) enforce an order; or

33 (B) obtain restitution or an injunction or other
34 equitable relief, or both;

35 (5) intervening in an action brought under Section 35.

1 (b) Subject to adjustment of the dollar amount pursuant to
2 Section 32(f), if a person violates or knowingly authorizes,
3 directs, or aids in the violation of a final order issued under
4 subsection (a)(1) or (2), the Administrator may impose a civil
5 penalty not exceeding \$20,000 for each violation.

6 (c) The Administrator may maintain an action to enforce
7 this Act in any county.

8 (d) The Administrator may recover the reasonable costs of
9 enforcing the Act under subsections (a) through (c), including
10 attorney's fees based on the hours reasonably expended and the
11 hourly rates for attorneys of comparable experience in the
12 community.

13 (e) In determining the amount of a civil penalty to impose
14 under subsection (a) or (b), the Administrator shall consider
15 the seriousness of the violation, the good faith of the
16 violator, any previous violations by the violator, the
17 deleterious effect of the violation on the public, the net
18 worth of the violator, and any other factor the Administrator
19 considers relevant to the determination of the civil penalty.

20 Section 34. Suspension, revocation, or nonrenewal of
21 registration.

22 (a) In this Section, "insolvent" means:

23 (1) having generally ceased to pay debts in the
24 ordinary course of business other than as a result of
25 good-faith dispute;

26 (2) being unable to pay debts as they become due; or

27 (3) being insolvent within the meaning of the federal
28 bankruptcy law, 11 U.S.C. Section 101 et seq., as amended.

29 (b) The Administrator may suspend, revoke, or deny renewal
30 of a provider's registration if:

31 (1) a fact or condition exists that, if it had existed
32 when the registrant applied for registration as a provider,
33 would have been a reason for denying registration;

34 (2) the provider has committed a material violation of
35 this Act or a rule or order of the Administrator under this

1 Act;

2 (3) the provider is insolvent;

3 (4) the provider or an employee or affiliate of the
4 provider has refused to permit the Administrator to make an
5 examination authorized by this Act, failed to comply with
6 Section 32(b)(2) within 15 days after request, or made a
7 material misrepresentation or omission in complying with
8 Section 32(b)(2); or

9 (5) the provider has not responded within a reasonable
10 time and in an appropriate manner to communications from
11 the Administrator.

12 (c) If a provider does not comply with Section 22(f) or if
13 the Administrator otherwise finds that the public health or
14 safety or general welfare requires emergency action, the
15 Administrator may order a summary suspension of the provider's
16 registration, effective on the date specified in the order.

17 (d) If the Administrator suspends, revokes, or denies
18 renewal of the registration of a provider, the Administrator
19 may seek a court order authorizing seizure of any or all of the
20 money in a trust account required by Section 22, books,
21 records, accounts, and other property of the provider which are
22 located in this State.

23 (e) If the Administrator suspends or revokes a provider's
24 registration, the provider may appeal and request a hearing
25 pursuant to the Administrative Review Law.

26 Section 35. Private enforcement.

27 (a) If an individual voids an agreement pursuant to Section
28 25(b), the individual may recover in a civil action all money
29 paid or deposited by or on behalf of the individual pursuant to
30 the agreement, except amounts paid to creditors, in addition to
31 the recovery under subsection (c)(3) and (4).

32 (b) If an individual voids an agreement pursuant to Section
33 25(a), the individual may recover in a civil action three times
34 the total amount of the fees, charges, money, and payments made
35 by the individual to the provider, in addition to the recovery

1 under subsection (c)(4).

2 (c) Subject to subsection (d), an individual with respect
3 to whom a provider violates this Act may recover in a civil
4 action from the provider and any person that caused the
5 violation:

6 (1) compensatory damages for injury, including
7 noneconomic injury, caused by the violation;

8 (2) except as otherwise provided in subsection (d) and
9 subject to adjustment of the dollar amount pursuant to
10 Section 32(f), with respect to a violation of Section 17,
11 19, 20, 21, 22, 23, 24, 27, or 28(a), (b), or (d), the
12 greater of the amount recoverable under paragraph (1) or
13 \$5,000;

14 (3) punitive damages; and

15 (4) reasonable attorney's fees and costs.

16 (d) In a class action, except for a violation of Section
17 28(a)(5), the minimum damages provided in subsection (c)(2) do
18 not apply.

19 (e) In addition to the remedy available under subsection
20 (c), if a provider violates an individual's rights under
21 Section 20, the individual may recover in a civil action all
22 money paid or deposited by or on behalf of the individual
23 pursuant to the agreement, except for amounts paid to
24 creditors.

25 (f) A provider is not liable under this section for a
26 violation of this Act if the provider proves that the violation
27 was not intentional and resulted from a good-faith error
28 notwithstanding the maintenance of procedures reasonably
29 adapted to avoid the error. An error of legal judgment with
30 respect to a provider's obligations under this Act is not a
31 good-faith error. If, in connection with a violation, the
32 provider has received more money than authorized by an
33 agreement or this Act, the defense provided by this subsection
34 is not available unless the provider refunds the excess within
35 two business days of learning of the violation.

36 (g) The Administrator shall assist an individual in

1 enforcing a judgment against the surety bond or other security
2 provided under Section 13 or 14.

3 Section 37. Statute of limitations.

4 (a) An action or proceeding brought pursuant to Section
5 33(a), (b), or (c) must be commenced within 4 years after the
6 conduct that is the basis of the Administrator's complaint.

7 (b) An action brought pursuant to Section 35 must be
8 commenced within two years after the latest of:

9 (1) the individual's last transmission of money to a
10 provider;

11 (2) the individual's last transmission of money to a
12 creditor at the direction of the provider;

13 (3) the provider's last disbursement to a creditor of
14 the individual;

15 (4) the provider's last accounting to the individual
16 pursuant to Section 27(a);

17 (5) the date on which the individual discovered or
18 reasonably should have discovered the facts giving rise to
19 the individual's claim; or

20 (6) termination of actions or proceedings by the
21 Administrator with respect to a violation of the Act.

22 (c) The period prescribed in subsection (b)(5) is tolled
23 during any period during which the provider or, if different,
24 the defendant has materially and willfully misrepresented
25 information required by this Act to be disclosed to the
26 individual, if the information so misrepresented is material to
27 the establishment of the liability of the defendant under this
28 Act.

29 Section 38. Transitional provisions; application to
30 existing transactions. Transactions entered into before this
31 Act takes effect and the rights, duties, and interests
32 resulting from them may be completed, terminated, or enforced
33 as required or permitted by a law amended, repealed, or
34 modified by this Act as though the amendment, repeal, or

1 modification had not occurred.

2 Section 900. The State Finance Act is amended by changing
3 Section 6z-26 as follows:

4 (30 ILCS 105/6z-26)

5 Sec. 6z-26. The Financial Institution Fund. All moneys
6 received by the Department of Financial and Professional
7 Regulation under the Safety Deposit License Act, the Foreign
8 Exchange License Act, the Pawnors Societies Act, the Sale of
9 Exchange Act, the Currency Exchange Act, the Sales Finance
10 Agency Act, the Debt Management Service Act (now repealed), the
11 Uniform Debt-Management Services Act, the Consumer Installment
12 Loan Act, the Illinois Development Credit Corporation Act, the
13 Title Insurance Act, and any other Act administered by the
14 Department of Financial and Professional Regulation as the
15 successor of the Department of Financial Institutions now or in
16 the future (unless an Act specifically provides otherwise)
17 shall be deposited in the Financial Institution Fund
18 (hereinafter "Fund"), a special fund that is hereby created in
19 the State Treasury.

20 Moneys in the Fund shall be used by the Department, subject
21 to appropriation, for expenses incurred in administering the
22 above named and referenced Acts.

23 The Comptroller and the State Treasurer shall transfer from
24 the General Revenue Fund to the Fund any monies received by the
25 Department after June 30, 1993, under any of the above named
26 and referenced Acts that have been deposited in the General
27 Revenue Fund.

28 As soon as possible after the end of each calendar year,
29 the Comptroller shall compare the balance in the Fund at the
30 end of the calendar year with the amount appropriated from the
31 Fund for the fiscal year beginning on July 1 of that calendar
32 year. If the balance in the Fund exceeds the amount
33 appropriated, the Comptroller and the State Treasurer shall
34 transfer from the Fund to the General Revenue Fund an amount

1 equal to the difference between the balance in the Fund and the
2 amount appropriated.

3 Nothing in this Section shall be construed to prohibit
4 appropriations from the General Revenue Fund for expenses
5 incurred in the administration of the above named and
6 referenced Acts.

7 Moneys in the Fund may be transferred to the Professions
8 Indirect Cost Fund, as authorized under Section 2105-300 of the
9 Department of Professional Regulation Law of the Civil
10 Administrative Code of Illinois.

11 (Source: P.A. 94-91, eff. 7-1-05.)

12 Section 905. The General Not For Profit Corporation Act of
13 1986 is amended by changing Section 103.05 as follows:

14 (805 ILCS 105/103.05) (from Ch. 32, par. 103.05)

15 Sec. 103.05. Purposes and authority of corporations;
16 particular purposes; exemptions.

17 (a) Not-for-profit corporations may be organized under
18 this Act for any one or more of the following or similar
19 purposes:

20 (1) Charitable.

21 (2) Benevolent.

22 (3) Eleemosynary.

23 (4) Educational.

24 (5) Civic.

25 (6) Patriotic.

26 (7) Political.

27 (8) Religious.

28 (9) Social.

29 (10) Literary.

30 (11) Athletic.

31 (12) Scientific.

32 (13) Research.

33 (14) Agricultural.

34 (15) Horticultural.

- 1 (16) Soil improvement.
- 2 (17) Crop improvement.
- 3 (18) Livestock or poultry improvement.
- 4 (19) Professional, commercial, industrial, or trade
5 association.
- 6 (20) Promoting the development, establishment, or
7 expansion of industries.
- 8 (21) Electrification on a cooperative basis.
- 9 (22) Telephone service on a mutual or cooperative
10 basis.
- 11 (23) Ownership and operation of water supply
12 facilities for drinking and general domestic use on a
13 mutual or cooperative basis.
- 14 (24) Ownership or administration of residential
15 property on a cooperative basis.
- 16 (25) Administration and operation of property owned on
17 a condominium basis or by a homeowner association.
- 18 (26) Administration and operation of an organization
19 on a cooperative basis producing or furnishing goods,
20 services, or facilities primarily for the benefit of its
21 members who are consumers of those goods, services, or
22 facilities.
- 23 (27) Operation of a community mental health board or
24 center organized pursuant to the Community Mental Health
25 Act for the purpose of providing direct patient services.
- 26 (28) Provision of debt management services as
27 authorized by the Uniform Debt-Management Services Act
28 ~~Debt Management Service Act~~.
- 29 (29) Promotion, operation, and administration of a
30 ridesharing arrangement as defined in Section 1-176.1 of
31 the Illinois Vehicle Code.
- 32 (30) The administration and operation of an
33 organization for the purpose of assisting low-income
34 consumers in the acquisition of utility and telephone
35 services.
- 36 (31) Any purpose permitted to be exempt from taxation

1 under Sections 501(c) or 501(d) of the United States
2 Internal Revenue Code, as now in or hereafter amended.

3 (32) Any purpose that would qualify for tax-deductible
4 gifts under the Section 170(c) of the United States
5 Internal Revenue Code, as now or hereafter amended. Any
6 such purpose is deemed to be charitable under subsection
7 (a) (1) of this Section.

8 (b) A corporation may be organized hereunder to serve in an
9 area that adjoins or borders (except for any intervening
10 natural watercourse) an area located in an adjoining state
11 intended to be similarly served, and the corporation may join
12 any corporation created by the adjoining state having an
13 identical purpose and organized as a not-for-profit
14 corporation. Whenever any corporation organized under this Act
15 so joins with a foreign corporation having an identical
16 purpose, the corporation shall be permitted to do business in
17 Illinois as one corporation; provided (1) that the name, bylaw
18 provisions, officers, and directors of each corporation are
19 identical, (2) that the foreign corporation complies with the
20 provisions of this Act relating to the admission of foreign
21 corporation, and (3) that the Illinois corporation files a
22 statement with the Secretary of State indicating that it has
23 joined with a foreign corporation setting forth the name
24 thereof and the state of its incorporation.

25 (Source: P.A. 92-33, eff. 7-1-01.)

26 (205 ILCS 665/Act rep.)

27 Section 910. The Debt Management Service Act is repealed.

28 Section 999. Effective date. This Act takes effect on
29 January 1, 2007.